REMARKS

Claims 1 – 13 and 15 – 30 remain pending in this application; Claim 14 has been canceled. Independent Claims 1 and 3 – 7 have been amended per the above Listing of Claims. Dependent Claims 10 – 18 have been presently amended as well, and Claims 21 – 30 are newly added, also as indicated in the Listing of Claims.

Section 103 Rejection

The Office Action states that claims 1 through 20 have been rejected under 35 U.S.C. 103 as being obvious over U.S. Patent No. 6,258,345 to Rouquet et al. ("Rouquet") in view of U.S. Patent No. 5,658,579 to Lafleur et al. ("Lafleur").

Applicant respectfully traverses this ground of rejection for the reasons set forth below.

Independent Claims 1 and 3 have been amended to recite that the plurality of substantially spherical particles of the present invention is selected from the group consisting of silica, boron nitride, Teflon, polyurethane powder, talc, mica, serecite, and mixtures thereof. Accordingly, the claimed invention of Claims 1 and 3 is now directed to a cosmetic composition that has a crosslinked elastomer, a plurality of substantially spherical particles selected from the aforementioned group and having a particle distribution of 24 microns (Claim 1) or 15 microns (Claim3), and a vehicle.

Independent Claims 4 and 5 have been amended to recite that the plurality of substantially spherical particles of the present invention is selected from the group consisting of silica, boron nitride, talc, mica, serecite, and mixtures thereof. Accordingly, the claimed invention of Claims 4 and 5 is now directed to a cosmetic composition that has a crosslinked elastomer, a plurality of substantially spherical particles selected from the aforementioned group and having a particle distribution of 7 microns (Claim 4) or 2 microns (Claim 5), and a vehicle.

Independent Claim 7 has been amended to recite that the plurality of substantially spherical particles of the present invention is selected from the group consisting of silica, boron nitride, Teflon, polyurethane powder, talc, mica, serecite, and mixtures thereof. Accordingly, the claimed invention of Claim 7 is now directed to a cosmetic composition that has a crosslinked elastomer, a plurality of substantially spherical particles selected from the aforementioned group and having a particle size range of from about 1 to about 25 microns, and a vehicle.

Dependent claims 8 –10, and 21 – 30 further limit, directly or indirectly, the composition of Claim 7 based on particle size range, particle size distribution, or the identity of the substantially spherical particles.

The spherical particles disclosed in the Rouquet patent are limited to organic particles having a particle diameter of less than 10 microns (col. 1, lines 46-47), preferably less than 5 microns (col. 2, lines 30-31). Such particle size of the organic particles is a critical feature of the disclosed compositions of Rouquet.

Independent claims 1, 3, and 7 of the present invention have been amended to recite that the spherical particles are selected from the group consisting of silica, boron nitride, Teflon, polyurethane powder, talc, mica, serecite, and mixtures thereof. None of these spherical powders is identified in the Rouquet patent. Applicant has found that certain inorganic spherical particles, as set forth in independent Claims 3 and 4 and dependent Claims 23, 26, 28 and 29, namely, silica, boron nitride, talc, mica, and serecite can produce the benefits of the present invention. Applicant has also found that the benefits of the present invention are achieved when the particle size range includes particles larger than 10 microns.

The disclosure of the LaFleur patent does not cure the deficiencies of the Rouquet patent. LaFleur concerns powder cosmetic compositions containing two different types of talc. According to the LaFleur disclosure, the first talc has a particle size distribution in which no more than 85% of the talc particles are 20 microns or less. That is, at least 15% of the first talc particles must be greater than 20 microns. Thus, it is clear there is no disclosure in LaFleur

concerning the range of particle sizes or the particle size distribution, since there is no upper limit for the particle size of the first talc material. LaFleur refers to this first talc as being coarse (Col. 3, line 47).

Moreover, the LaFleur patent states the talc is natural, powdered hydrous magnesium silicate generally available from any number of sources (Col. 3, lines 8-23). The Examiner's attention is directed to Harry's Cosmeticology, pp.527-8 (8th Edition, 2000) (copy attached), which indicates that talc is the softest known mineral and that it has a platy structure. The talc required for use in connection with the present invention is spherical not platy, and must be milled to obtain that specific geometry. There is no disclosure in LaFleur that LaFleur's talc material is anything but the conventional, natural platy substance described in Harry's Cosmeticology.

One of ordinary skill in the art would not be motivated to combine the teachings of LaFleur to cure the deficiencies of Rouquet. First, Applicant believes the Examiner incorrectly interprets the particle size distribution information provided in LaFleur. At page 3 of the June 18, 2003 Office Action, the Examiner states that "the talc therein comprises particles having a particle size distribution of 10 microns or less; 15 microns or less, and 20 microns or less." (LaFleur at Col. 2 lines 10-34). As explained above, Applicant understands this passage to recite the particle size distribution properties for a **coarse** talc material in which no more than 85% of whose particles are 20 microns or less, i.e., 15% or more of which are greater than 20 microns. One of ordinary skill in the art would not use the teachings of LaFleur inasmuch as they are incompatible with the critical requirement of Rouquet for a particle size of less than 10 microns.

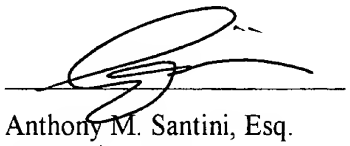
Second, one of ordinary skill in the art would not use the teachings of LaFleur because spherical talc particles are neither disclosed nor suggested for use in the LaFleur compositions. The ordinarily skilled practitioner, evaluating LaFleur, would necessarily conclude that the disclosure of platy particles is inconsistent with the spherical particles of Rouquet.

Third, the practitioner of ordinary skill in this art would dismiss LaFleur as teaching the use of inorganic particles, while Rouquet critically requires organic particles.

For all of the reasons set forth above, it is respectfully submitted that the claims of the present invention are patentable over the cited combination of references and are in condition for allowance. If there is any item that the Examiner would like to discuss prior to passing this application to allowance, please do not hesitate to contact the undersigned attorney.

November 17, 2003

Respectfully submitted,



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sufficiently mobile for a period of time to cover the face evenly, without streaking or unevenness. If additional material is needed to be applied to achieve coverage, the newly applied product should blend smoothly with no lines due to overlap.

WEAR

Users of foundation makeup want their appearance to remain fresh throughout the day, with possibly only light touchup with a complementary pressed powder. Consumers with oily or combination skin are particularly concerned about wear due to the change in appearance over time caused by oil breakthrough. Ingredients used to prolong wear include oil-absorbing fillers to soak up excreted sebum and film-formers to prevent shifting of the deposited film. A semimatte or natural looking foundation has a better chance than does a matte product of remaining unchanged over the period of wear, because once a part of a matte finish becomes saturated with oil, the contrast with the still dry portion is very noticeable.

PIGMENTS AND FILLERS

Filler pigments are materials whose main function is not to contribute color or coverage but to act as "extenders" for the pigments, improving dispersion to lessen the amount of true pigment actually needed. A filler is generally chosen as the material to vary as color content changes within a shade line of a product to maintain a constant pigment percentage. Because of their occasional high percentage within a formulation, filler pigments often have a strong impact on the functional and aesthetic properties of a product. Platy fillers are known for their smooth skin feel and their ability to adhere to the skin.

Talc

Talc, a hydrated magnesium aluminum silicate, is the most common filler pigment used in foundations. The standard for the softest known mineral (1 MOH scale) is talc, which in combination with its platy structure, results in excellent skin feel. Cosmetic grade talc must be clean and bright white in color, free of asbestiform minerals, and low in heavy metals (<20 ppm lead, <3 ppm arsenic). Talc is a natural mineral. Cosmetic talcs are mined in Italy, France, the United States, India, and China. Talc ore is crushed, dry ground, sometimes washed, and classified to obtain specific particle size ranges. Morphological forms are macrocrystalline and semimacrocrystalline. Examples of platy macrocrystalline ores are Italian, French, and Vermont talc. Macrocrystalline talcs are characterized by translucency, smooth skin feel, excellent slip, and moderate compressibility. Of these, Italian talc has long

had the reputation of being the finest talc with the highest translucency and smoothest feel, due to the predominance of large, thin platelets relatively free from surface defects. Another property of Italian talc, of importance in dusting powders, is good fragrance retention. Although fragrance levels are much lower in foundation, talcs, low in iron content are preferred for lack of reactivity with fragrance compounds. Alabama talc and Chinese talc are semi-macrocrystalline talcs, which are more compressible than the macrocrystalline varieties, thus especially suited for use in pressed powders. Many Chinese talcs are of high quality with clean color, good skin feel, and good compressibility. Although higher in cost, jet-milled grades of talc are available, which are characterized by fine (<5 m) particle size, exceptionally soft, smooth skin feel, and good compressibility.

In spite of periodic concerns regarding safety, talc remains the most common filler pigment used in color cosmetics, probably due to low cost, ease of handling, and ready availability. To date, there is no evidence that cosmetic-grade talc is hazardous to health under normal use conditions.

Mica

Mica is a platy potassium aluminum silicate that is somewhat harder (MOH scale 3) and more translucent than talc. Cosmetic-grade muscovite mica is mined in the United States, China, and India and is finished by wet or dry grinding. Wet ground mica has a higher bulk density, smoother skin feel, lower vehicle absorption, and lower opacity than the less expensive dry ground material. Following the grinding step, the mica is dried and classified according to particle size range. Fractions used as fillers in foundation are usually under 44 μm. Supplied as smooth, translucent flakes, mica is used in powder and dispersed foundations to impart a smooth, silky feel without additional opacity. In powder systems, mica's refractive index of 1.58 results in a slight luster, which may or may not be desirable.

Sericite

Sericite is a type of mica having properties intermediate between those of talc and other micas. Compared with most mica, sericite is more opaque, has a higher bulk density, better compressibility, lower oil absorption, and less luster. Due to a generally higher level of water of crystallization than most mica, sericite has an almost moist skin feel. Sericite is particularly useful in pressed powder foundation to impart a smooth, emollient skin feel, good slip, and good pick-up without dusting.

Specialty Fillers

Specialty fillers are used as texture modifiers to lend superior performance properties to color cosmetics. Platy materials with smooth surfaces such as